

**EXHIBIT I**

**CORPORATE INTEGRITY AGREEMENT**

**BETWEEN THE  
OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
ROBERT M. TAYLOR, M.D.**

**I. PREAMBLE**

Robert M. Taylor, M.D. ("Taylor") agrees to enter into this Corporate Integrity Agreement ("Agreement") with the Office of Inspector General of the United States Department of Health and Human Services ("OIG") to provide for the establishment of a Corporate Integrity Program to ensure compliance with the billing requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) by Taylor, his employees and third parties with whom Taylor contracts to act as billing agents for Taylor. The Corporate Integrity Program (the "Program") shall be maintained so as to ensure, to the extent reasonably possible, that Taylor and each of his employees, agents and contractors maintain the business integrity required of a participant in Federal health care programs, and that Taylor's billings for medical care and related reimbursable expenses are in compliance with all statutes and regulations applicable to such programs and with the terms of this Agreement as set forth below. Taylor will do everything he can do in his capacity to ensure compliance with the terms of this Agreement.

**II. TERM OF THE AGREEMENT**

Except as otherwise provided, the period of compliance obligations assumed by Taylor under this Agreement shall be five (5) years from the date of execution of this Agreement. The date of execution shall be the date the final signature is obtained on this Agreement. The obligations under this Agreement shall not become effective, and the obligation dates shall not begin to run, until the date that Taylor returns to work, or the execution date, whichever comes first.

**III. CORPORATE INTEGRITY OBLIGATIONS**

Within ninety (90) days of the date of the effective date of this Agreement, Taylor agrees to implement a Corporate Integrity Program (the "Program"), which shall include the provisions described herein.

Within the first thirty (30) days following the effective date of this Agreement, Taylor shall post in a prominent place, accessible to all patients and employees, a notice detailing his

commitment to comply with all applicable statutes, regulations and directives applicable to Medicare, Medicaid and all other Federal health care programs in the conduct of his business.

**A. INFORMATION AND EDUCATION**

Within the first sixty (60) days following the effective date of this Agreement, Taylor and all personnel involved in preparing or submitting Medicare, Medicaid, and all other Federal health care program bills shall be trained in the proper billing standards, methods, and procedures to ensure accurate billing for services rendered to these Federal health care programs. The training shall be designed to ensure that Taylor and all of his employees and agents are aware of all applicable health care statutes, regulations, and program guidelines and with the standards of business conduct that such individual is expected to follow and the consequences (i.e., termination, legal sanctions, etc.) both to the individual and Taylor that will ensue from any violation of such requirements. In addition, Taylor will arrange for all new personnel involved in billing for services to participate in such training no later than thirty (30) days after they begin working for Taylor. Until they have had the requisite training, such new employees will work under the direct supervision of an employee who has received such training. This training program shall provide for no less than six (6) hours annually of training for each person.

At a minimum, this training program shall cover the following topics:

1. The proper billing standards and procedures for the submission of accurate bills for services rendered and/or items provided to Medicare, Medicaid, and all other Federal health care programs to which Taylor submits claims;
2. All applicable statutes, rules, regulations, and guidelines related to Medicare, Medicaid and other Federal health care programs billing, reimbursement, and the legal sanctions for improper billing;
3. All applicable statutes, rules, regulations, and guidelines related to health care fraud and abuse and the legal sanctions for violating these laws; and
4. The personal obligation of each individual involved to make reasonable efforts to ensure that the information provided by the individual (either orally or in writing) relating to the care or the services rendered to patients of the Federal health care programs, is accurate.

**B. REFERRAL SOURCES**

Taylor and his employees shall: (a) refrain from receiving, soliciting, offering and paying for any item or service of value (i.e., remuneration) to physicians, hospitals or other referral sources, unless the remuneration and the particular circumstances under which

such remuneration is given is outside the scope of the anti-kickback statute (codified at 42 U.S.C. § 1320a-7b(b)), the Federal physician self referral prohibition (also known as the "Stark Statute") (codified at 42 U.S.C. § 1395nn), and other applicable statutes, regulations, and program requirements relating to payments to and from referral sources, or the remuneration is otherwise excepted under the "safe harbor" regulations or other exceptions to the anti-kickback statute and Stark Statute.

**C. PERSONAL SERVICES AND BUSINESS CONTRACTS**

Taylor will adopt policies reasonably designed to prevent contractual relationships that violate the anti-kickback statute and the Stark Statute, and will implement procedures to evaluate all existing contractual relationships with physicians, employees, contractors, vendors, and other persons or entities. At a minimum, Taylor shall seek to establish a process to ensure that all such contracts in which he enters comply with the following standards:

1. The agreement shall be set out in writing and signed by the parties;
2. The agreement shall specify the services to be provided by the agent;
3. If the agreement is intended to provide for the services of the agent on a periodic, sporadic or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement shall specify exactly the schedule of such intervals;
4. The terms of the agreement shall be for not less than one year;
5. The aggregate compensation paid to the agent over the term of the agreement shall be set in advance, be consistent with fair market value in arms-length transactions and not be determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid and other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f);
6. The services performed under the agreement shall not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law; and
7. The aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

Taylor shall be prepared to provide to the OIG, upon request, copies of the contracts, all non-privileged communications related to the contracts and the actual performance of the

duties under the contracts such as time sheets, service logs, and payment documentation.

Taylor shall have an experienced attorney with knowledge of the Federal health care statutes, regulations, and rules; review all of the personal service and management contracts entered into by Taylor to ensure that they have met the requirements established in this section. All materials relating to the attorney's analysis of the personal service and management contracts entered into by Taylor shall be maintained and available for OIG review and inspection for a minimum of six (6) years after the execution of this Agreement.

**D. INDEPENDENT REVIEWS**

Within ninety (90) days from the effective date of this Agreement, Taylor shall retain an Independent Review Organization, such as an accounting firm or consulting firm, to perform agreed upon procedures to assist the parties in assessing the adequacy of Taylor's billing and compliance practices. This will be an annual requirement and will cover a twelve (12) month period. The Independent Review Organization must have expertise in billing, coding, reporting and other requirements of Medicare, Medicaid, and other Federal health programs from which Taylor seeks reimbursement.

The Independent Review Organization will conduct two separate engagements. One will be an analysis, based on agreed upon procedures, of Taylor's billing to the Medicare, Medicaid and all other Federal health care programs to assist the parties in determining compliance with all applicable statutes, regulations, and policies ("billing engagement"). The second engagement will determine whether Taylor is in compliance with this Agreement ("compliance engagement"), based upon agreed upon procedures.

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of claims that can be projected to the population of claims affected by the matter for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be designed to generate a sample within a ninety (90) percent confidence level and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. Both the probe sample and the sample must be selected through random numbers. Taylor shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at [www.hhhs.gov/progorg/ratstat.html](http://www.hhhs.gov/progorg/ratstat.html).

Each individual billing engagement analysis shall include the following components in its methodology:

- a. Billing Engagement Objective: A statement stating clearly the objective

intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.

b. **Billing Engagement Population:** Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.

c. **Sources of Data:** Provide a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and contractual obligations.

d. **Sampling Unit:** Define the sampling unit, which is any of the designated elements that comprise the population of interest.

e. **Sampling Frame:** Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The billing engagement shall provide:

a. An analysis of Taylor's billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

b. An analysis of whether Taylor is submitting accurate claims for services billed to Medicare, Medicaid, and other Federal health care programs;

c. An analysis of Taylor's procedures to correct inaccurate billings or codings to Medicare, Medicaid, and other Federal health care programs;

d. An analysis of whether Taylor's programs, policies, operations, and procedures comply with applicable statutes, regulations and other requirements of Medicare, Medicaid, and other Federal health care programs from which Taylor seeks reimbursement; and

e. An analysis of the steps Taylor is taking to bring his operations into compliance or to correct problems identified by the audit.

2. *Compliance Engagement.* An Independent Review Organization will also conduct a compliance engagement which will provide a section by section analysis of whether Taylor's program, policies, procedures, and operations comply with the terms of this Agreement. A complete copy of the Independent Review Organization's billing and compliance engagement shall be included in each of Taylor's Annual Reports to the OIG.

3. *Disclosure of Overpayments and Material Deficiencies.* If, as a result of these engagements, Taylor or the Independent Review Organization identifies any billing, coding or other policies, procedures and/or practices that result in an overpayment and/or material deficiency, Taylor shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days of discovering the deficiency or overpayment and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the

payor) to correct the problem, including preventing the deficiency from recurring. The notice to the payor shall include:

- a. A statement that the refund is being made pursuant to this Agreement;
- b. A description of the complete circumstances surrounding the overpayment;
- c. The methodology by which the overpayment was determined;
- d. The amount of the overpayment;
- e. Any claim-specific information used to determine the overpayment (e.g., beneficiary health insurance number, claim number, service date, and payment date);
- f. The provider identification number under which the repayment is being made.

If Taylor determines an overpayment represents a material deficiency, contemporaneous with Taylor's notification to the payor as provided above, Taylor shall also notify OIG of:

- a. The material deficiency (including Taylor's findings and any overpayment amounts);
- b. Taylor's findings concerning the material deficiency;
- c. Taylor's action(s) to correct and prevent such material deficiency from recurring;
- d. The payor's name, address, and contact person where the overpayment was sent;
- e. The date of the check and check number (or electronic transaction number) on which the overpayment was repaid.

For purposes of this Agreement, a "material deficiency" shall mean anything that has a significant, adverse impact upon the Medicare and/or Medicaid programs, which may be the result of an isolated event or a series of occurrences, and which lacks conformity with Medicare and/or Medicaid billing and/or reimbursement principles or other applicable statutes, and the regulations and written directives issued by Health Care Financing Administration (HCFA) and/or its agents, or any other agency charged with administering the health care program implicated and/or its agents.

4. *Verification/Validation.* In the event that the OIG determines that it is necessary to conduct an independent audit or review to determine whether or the extent to which Taylor is complying with its obligation under this Agreement, Taylor agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

#### **E. DEALING WITH EXCLUDED OR CONVICTED PERSONS OR ENTITIES**

Effective upon the date of execution of this Agreement, Taylor shall not employ or

contract with, with or without pay, an individual or entity that is listed by a Federal agency as excluded, suspended or otherwise ineligible for participation in Federal programs. In order to carry out the policy, Taylor shall make a reasonable inquiry into the status of any potential employee or consultant. Such a reasonable inquiry shall include, at a minimum, a review of the OIG's Cumulative Sanctions Report and the General Services Administration's ("GSA's") List of Parties Excluded from Federal Procurement and Non-Procurement Programs. Among other places, these reports can be found on the "Internet" at <http://www.dhhs.gov/progorg/oig> and <http://www.arnet.gov/epls>, respectively.

Taylor will remove from responsibility for, or involvement with, Taylor's Federal health care program business operations any employee who becomes suspended or is proposed for exclusion during the individual's employment with Taylor until the resolution of such suspension or proposed exclusion. In addition, if any employee of Taylor is charged with a criminal, civil or administrative offense relating to Medicare, Medicaid, or other Federal health care program business, Taylor will remove that employee immediately from responsibility for or involvement with Taylor's Federal health care program business affairs until the resolution of such charges. If an employee is convicted or debarred, Taylor shall remove that individual from any position from which the individual's salary or the services rendered by the individual are paid in whole or in part, directly or indirectly by the federal health care programs or otherwise with federal funds. Taylor shall notify OIG of each such personnel action taken and the reasons therefore, within thirty (30) days of the action.

#### **IV. SELF-DISCLOSURE OF PROBABLE VIOLATIONS**

During the term of this Agreement, Taylor will report to OIG any reliable evidence of actions that Taylor believes constitute a probable violation of any state or Federal civil, criminal or administrative statute, regulation, or rule governing a Federal health care program. When such disclosure is required by the Agreement, Taylor shall make the required disclosure as soon as practicable, but in no event later than thirty (30) calendar days after becoming aware of the existence of the probable violation. The evidence to be disclosed under this paragraph will include evidence relating to conduct by any of Taylor's personnel and any person or entity with a financial interest in Taylor's business, and it will include evidence disclosed to Taylor from any source. Taylor will certify to OIG that all disclosures made under this paragraph have been fully investigated and that appropriate actions have been taken to ensure that Taylor is in compliance with all state and Federal civil, criminal, and administrative statutes, regulations and rules governing all Federal health care programs. Nothing in this paragraph waives OIG's right to enforce any and all statutes and regulations governing any Federal health care program, subject to the release provisions of the Settlement Agreement signed this same date.

## **V. OIG INSPECTION, AUDIT AND REVIEW RIGHTS**

In addition to any other right OIG may have by statute, regulation, contract or pursuant to this Agreement, OIG or its duly authorized representative(s) may examine Taylor's books, records, and other company documents and supporting materials for the purpose of verifying and evaluating: (i) Taylor's compliance with the terms of this Agreement; and (ii) Taylor's compliance with the requirements of the Medicare, Medicaid and other Federal health care programs. The documentation described above shall be made available by Taylor at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its authorized representative(s) may interview any of Taylor's employees who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. Taylor agrees to assist OIG in contacting and arranging interviews with such employees upon OIG's request. Taylor's employees may elect to be interviewed with or without a representative of Taylor present. OIG, HCFA, or the affected intermediary or carrier, may conduct unannounced on-site visits at any time to review patient medical records and other related documentation for the purpose of verifying and evaluating Taylor's compliance with the statutory and regulatory requirement of Medicare, Medicaid and all other Federal health care programs.

## **VI. REPORTS**

### **A. IMPLEMENTATION REPORT**

Within one hundred and twenty (120) days after the effective date of this Agreement, Taylor shall submit a written report to OIG summarizing the status of Taylor's implementation of the requirements of this Agreement. This report, known as the "Implementation Report," shall be sent to the address set forth in section VII of this Agreement. The Implementation Report shall include:

- (1) A copy of the notice Taylor posted in his office describing his commitment to comply with all applicable statutes, regulations and directives applicable to Medicare, Medicaid and all other Federal health care programs in the conduct of his business.
- (2) A description of the training programs implemented pursuant to section III.A of this Agreement and a summary of the activities engaged in, in furtherance of the training programs, including a schedule and topic outline of the training sessions, and a written certification from all appropriate personnel that they received training pursuant to the requirements set forth in section III.A of this Agreement and that they received, read, and understood the applicable health care laws, including Medicare laws, regulations and standards of business conduct.



- (3) A copy of review conducted pursuant to section III.D of this Agreement, a complete description of the findings made during the review; copies of the disclosure or notice documents made by Taylor pursuant to this section; a description of the corrective steps, including, but not limited to, any revisions or amendments to billing policies, procedures and practices; proof of refund to the pertinent payor (where applicable), and a complete description of the methodology behind any repayments made as a result of reviews or audits (where applicable).
- (4) A resolution from Taylor certifying that he has reviewed the Implementation Report, he has made a reasonable inquiry regarding its content and believes that, upon his inquiry, the information is accurate and truthful.

**B. ANNUAL REPORTS**

Taylor shall make annual written reports (each one of which is referred to throughout this Agreement as the "Annual Report") to OCIG describing the measures Taylor has taken to implement and maintain the Program and ensure compliance with the terms of this Agreement. In accordance with the provisions above, the Annual Report shall include:

- (1) A description of the training programs implemented pursuant to section III.A of this Agreement and a summary of the activities engaged in, in furtherance of the training programs, including a schedule and topic outline of the training sessions, and a written certification from all appropriate personnel that they received training pursuant to the requirements set forth in section III.A of this Agreement and that they received, read, and understood the applicable health care laws, including Medicare statutes, regulations and standards of business conduct.
- (2) A written certification from Taylor and his attorney, that they have reviewed the applicable materials that pertain to Taylor complying with the requirements established pursuant to section III.B, they have made a reasonable inquiry regarding its content and believes that, upon their inquiry, Taylor has met the requirements of section III.B.
- (3) Pursuant to the requirements set forth in section III.C, Taylor shall have an experienced attorney with knowledge of the Federal health care statutes, regulations, and rules certify that he has reviewed all of the personal service and management contracts entered into by Taylor.
- (4) A copy of the audits and reviews conducted pursuant to section III.D of this Agreement relating to the year covered by the Annual Report; a complete description of the findings made during the reviews and audits; copies of the disclosure or notice documents made by Taylor pursuant to this section; a

description of the corrective steps, including but not limited to, any revisions or amendments to billing policies, procedures and practices; proof of refund to the pertinent payor (where applicable), and a complete description of the methodology behind any repayments made as a result of reviews or audits (where applicable).

- (5) A written certification that Taylor has disclosed all probable violations pursuant to section IV.
- (6) A resolution from Taylor certifying that he has reviewed the Annual Report, he has made a reasonable inquiry regarding its content and believes that, upon his inquiry, the information is accurate and truthful.

The annual reports shall be received by the OCIG according to the following schedule:

• First Annual Report	<u>November 1, 1999</u>
• Second Annual Report	<u>November 1, 2000</u>
• Third Annual Report	<u>November 1, 2001</u>
• Fourth Annual Report	<u>November 1, 2002</u>
• Fifth Annual Report	<u>November 1, 2003</u>

## **VII. NOTIFICATIONS AND SUBMISSION OF REPORTS**

Unless otherwise stated subsequent to the execution of this Agreement, all notifications and reports required under the terms of this Agreement shall be submitted to the entities listed below:

ATTN: Civil Recoveries Branch - Compliance Unit  
Office of Counsel to the Inspector General  
Office of Inspector General  
U.S. Department of Health and Human Services  
330 Independence Avenue, SW  
Cohen Building, Room 5527  
Washington, DC 20201  
Ph. 202.619.2078  
Fax 202.205.0604

All correspondence to Taylor shall be sent to:

Robert M. Taylor, M.D.  
216 Pat Lane  
Caldwell, ID 83605  
Ph. 208.459.1814

## **VIII. DOCUMENT AND RECORD RETENTION**

Taylor shall maintain for inspection documents and records relating to (1) compliance with requirements of this Agreement; and (2) reimbursement from the Medicare, Medicaid and all other Federal health care programs for a period of six (6) years or for whatever period otherwise required by law or policy, whichever is longer.

## **IX. ACQUISITION CLAUSE**

In the event that Taylor acquires (by purchase or otherwise) or establishes new business units after the date of execution of this Agreement, Taylor shall implement all applicable provisions of this Agreement, including any training or education requirements, within one-hundred and twenty (120) days following such purchase or establishment, or by such other date agreed to by Taylor and OIG. If Taylor joins another practice, the terms of this Agreement shall apply only to services provided by Taylor, and the obligations under this Agreement shall remain with Taylor, and shall not apply to or become the obligation of, any other physicians or practitioners employed by or working with the practice. However, Taylor shall be responsible for fulfilling his compliance obligations even if those obligations cannot be completely separated from those assumed by the practice.

## **X. BREACH AND DEFAULT PROVISIONS**

Taylor's compliance with the terms and conditions in this Agreement shall constitute an element of Taylor's present responsibility with regard to participation in Federal programs. Full and timely compliance by Taylor shall be expected throughout the duration of this Agreement with respect to all of the obligations herein agreed to by Taylor. As stated below in section XII of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect.

### **A. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS**

As a contractual remedy, Taylor and OIG hereby agree that failure to comply with certain obligations set forth in this Agreement may lead to the imposition of the following monetary penalties (hereinafter referred to as "stipulated penalties") in accordance with the following provisions:

1. A stipulated penalty of \$2,500 for each day Taylor fails to comply with any of the following, which stipulated penalty shall begin to accrue one day after the date the obligation becomes due:

- a. submission of the Implementation Report within one hundred and twenty (120) days of the effective date of this Agreement, as required in section III of this Agreement; and
  - b. submission of complete Annual Reports demonstrating compliance, including the submission of all required statements, summaries, reports, and certifications, as required in section VI of this Agreement.
2. A stipulated penalty of \$2,500 for each day Taylor fails to grant OIG access to the information or documentation necessary to exercise the OIG's inspection, audit and review rights set forth in section V of this Agreement, which stipulated penalty shall begin to accrue on the date Taylor fails to grant access.
3. A stipulated penalty of \$1,500 for each day Taylor continues to employ an individual in a position related to the Federal health care programs (as specified in section III.E above) after that individual has been listed by a Federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program, which stipulated penalty shall begin to accrue on the date of the beginning of the employment relationship or the listing of the individual, whichever is later.
4. A stipulated penalty of \$1,000 for each day Taylor fails to comply with any other requirement in this Agreement, which is not covered by provisions 1, 2 or 3 of section X.A of this Agreement, which stipulated penalty shall begin to accrue on the date of the OIG's notice of noncompliance or as otherwise indicated in the OIG's notice, in accordance with section X.B.

**B. PAYMENT OF STIPULATED PENALTIES**

Upon finding that Taylor has failed to comply with any of the above-enumerated obligations, OIG shall notify Taylor in writing, and deliver personally, or by certified mail, notice of: (i) Taylor's failure to comply; and (ii) OIG's exercise of its contractual right to demand payment of the stipulated penalties payable under this Agreement (this notification of the OIG's notice of noncompliance is hereinafter referred to as the "Demand Letter").

Within ten (10) days of receipt of the Demand Letter, Taylor shall respond by either: (i) curing the breach to the OIG's satisfaction, paying the applicable stipulated penalties and notifying OIG of his corrective actions; or (ii) sending in writing to the OIG a request for a hearing before an HHS administrative law judge to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth in section X.D of this Agreement, which request shall suspend implementation and payment of the stipulated penalties until a decision is reached by the HHS administrative law judge. Failure to

respond to the Demand Letter within the ten (10) day period shall be considered a material breach of this Agreement and shall be grounds for exclusion under section X.C below.

If Taylor submits a timely written request to HHS-OIG for an extension of the relevant time period to perform any act or file any notification or report under this Agreement, but such an extension is denied, HHS-OIG agrees that Stipulated Penalties shall not begin to accrue until two (2) business days following Taylor's receipt of HHS-OIG's written denial of such an extension. A "timely written request" is defined as a request in writing received by HHS-OIG at least five (5) business days prior to the date by which any act is due to be performed or notification or report is due to be filed.

Payment of the stipulated penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OCIG at the address set forth in section VII of this Agreement.

Except as otherwise noted above, these provisions for payment of stipulated penalties shall not affect or otherwise set a standard for the OIG's determination that Taylor has materially breached this Agreement, which decision shall be made at the OIG's discretion and governed by the provisions in section X.C of this Agreement, below.

#### **C. REMEDIES FOR MATERIAL BREACH OF THIS AGREEMENT**

If Taylor engages in conduct that OIG considers to be a material breach, defined below, of this Agreement, OIG may seek exclusion of Taylor from participation in the Medicare, Medicaid and any other Federal health care programs. Upon making its determination, OIG shall notify Taylor of the alleged material breach by certified mail and of its intent to exclude as a result thereof (this notice shall be referred to hereinafter as the "Notice of Material Breach and Intent to Exclude Letter"). Taylor shall have thirty-five (35) days from the date of the letter to:

- (1) demonstrate to the OIG's satisfaction that Taylor is in full compliance with the Agreement; or
- (2) cure the alleged material breach; or
- (3) demonstrate to the OIG's satisfaction that the alleged the material breach cannot be cured within the thirty-five (35) day period, but that Taylor has begun to take action to cure the material breach and that Taylor will pursue such an action with due diligence. Taylor shall, at this time, submit a timetable for curing the material breach for the OIG's approval.

If at the conclusion of the thirty-five (35) day period (or other specific period as

subsequently agreed by OIG and Taylor), Taylor fails to act in accordance with provisions 1, 2 or 3 above, OIG may exclude Taylor from participation in the Medicare, Medicaid and all other Federal health care programs. OIG will notify Taylor in writing of its determination to exclude Taylor (this letter shall be referred to hereinafter as the "Exclusion Letter").

Notwithstanding any provisions in Chapter 42 of the Code of Federal Regulations, the exclusion shall take effect thirty (30) days from the date of the Exclusion Letter unless Taylor exercises his contractual right to seek review of the OIG's exclusion determination by requesting a hearing before an administrative law judge as provided in section IX.D below. In the event Taylor requests such a hearing, the exclusion shall not be effective until the issuance of an administrative law judge's decision supporting the OIG's exclusion determination. The exclusion shall have national effect and will also apply to all other Federal procurement and non-procurement programs.

For purposes of this section, a "material breach" shall mean: (i) a failure to report a material deficiency, take corrective action and pay the appropriate refunds, as provided in section III.D of this Agreement; (ii) repeated or flagrant violations of the obligations under this Agreement, including, but not limited to, the obligations addressed in section X.A of this Agreement; or (iii) failure to respond to a Demand Letter concerning the payment of stipulated penalties in accordance with section X.B above.

In connection with the OIG's determination to exclude Taylor pursuant to this provision, Taylor shall have the right to dispute the OIG's determination in accordance with the agreed upon provisions set forth in section X.D of this Agreement.

#### **D. DISPUTE RESOLUTION**

Upon OIG's delivery to Taylor of its Demand letter or Exclusion Letter, and as an agreed upon contractual remedy for the resolution of disputes arising under the obligations in this Agreement, Taylor shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. § 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this Agreement. Specifically, the OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an HHS administrative law judge in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. The administrative law judge's decision, in turn, may be appealed to HHS's Departmental Appeals Board ("DAB") in a manner consistent with the provisions in 42 C.F.R. § 1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within ten (10) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this section shall be: (i) whether, on the date of the Demand Letter, Taylor was in full and timely compliance with the obligations in this Agreement for which OIG demands payment; (ii) whether Taylor failed to cure; (iii) whether it was reasonable for the alleged breach to have been cured within the ten-day period; and (iv) the period of noncompliance. For purposes of paying stipulated penalties under this Agreement, and if Taylor chooses to seek review in lieu of curing the breach and paying the stipulated penalties, as set forth above, the administrative law judge's decision shall give rise to Taylor's obligation to pay. Thus, payment will be due twenty (20) days from the day the administrative law judge's decision is issued. Taylor's election of his contractual right to appeal to the DAB shall not excuse his obligation to make payment upon the issuance of the administrative law judge's decision.

Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this Agreement shall be: (i) whether Taylor was in material breach of one or more of his obligations under this Agreement; (ii) whether the alleged material breach was continuing on the date of the Exclusion Letter; (iii) whether, as of the date of the Exclusion Letter, Taylor had failed to cure; and (iv) whether the alleged material breach could have been cured within the thirty-five-day period or such other period as agreed to in writing between Taylor and OIG. For purposes of the exclusion herein agreed to, in the event of a material breach of this Agreement, an administrative law judge's decision finding in favor of the OIG shall be deemed to make the exclusion effective, at which time the OIG may proceed with its exclusion of Taylor. The administrative law judge's decision may be appealed to the DAB in a manner consistent with the provisions in 42 C.F.R. §§ 1005.21.

Neither the review by an administrative law judge nor the potential subsequent review of the administrative law judge's decision by the DAB, as provided for above, shall be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this Agreement agree that the DAB's decision shall be considered final for all purposes under this Agreement and shall not be appealed either administratively or judicially or otherwise be subject to review by any court or other adjudicative forum.

#### **XI. COSTS RELATED TO ADDITIONAL AUDITS**

In addition to the obligations assumed by Taylor under the Agreement and as described above, if OIG determines that it is necessary to conduct an independent audit or review to determine whether or to the extent to which Taylor is complying with his obligation under this Agreement, Taylor agrees to pay for the reasonable cost of any such audit or review.

## **XII. EFFECTIVE AND BINDING AGREEMENT**

Consistent with the provisions in the Settlement Agreement pursuant to which this Agreement is entered, and into which this Agreement is incorporated, Taylor and the OIG agree as follows:

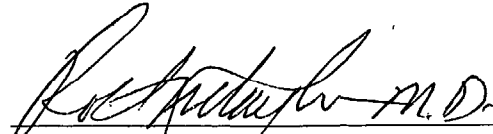
- (1) this Agreement shall be binding on the successors, assigns and transferees of Taylor;
- (2) this Agreement shall become final and binding only upon signing by each respective party hereto; and
- (3) any modifications to this Agreement shall be made with the prior written consent of the parties to this Agreement.



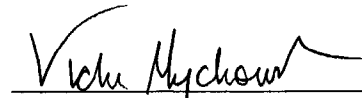
IN WITNESS WHEREOF, the parties hereto affix their signatures:

**ROBERT M. TAYLOR, M.D.**

Nov 19, 1998  
Date


  
Robert M. Taylor, M.D.

11/18/98  
Date

  
Vicki Myckowiak, Esquire  
Counsel for Robert M. Taylor, M.D.

**OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

11/23/98  
Date

  
Lewis Morris, Esquire  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
U. S. Department of Health and Human Services